

FILED

January 25, 2016

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8008

**ORDER ESTABLISHING DEADLINE FOR
SUBMITTING COMMENTS ON PROPOSED AMENDMENTS
TO THE RULES FOR ADMISSION TO THE BAR**

The Minnesota State Board of Law Examiners has submitted a petition that proposes amendments to the Rules for Admission to the Bar. A copy of the petition containing the proposed amendments is attached to this order. The court will consider the proposed amendments after soliciting and reviewing any comments on those amendments.

IT IS HEREBY ORDERED that any individual wishing to provide comments in support of or opposition to the proposed amendments shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts. Written comments shall be electronically submitted for filing in Administrative Case Number ADM10-8008 using the appellate courts' e-filing application, E-MACS, or may be filed in person at 25 Rev. Dr. Martin Luther King Jr. Blvd., Suite 305, Saint Paul, Minnesota 55155. All comments shall be filed so as to be received no later than March 25, 2016.

Dated: January 25, 2016

BY THE COURT:

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
In Supreme Court

FILE NO. ADM-10-8008

FILED

January 5, 2016

**OFFICE OF
APPELLATE COURTS**

**Petition of the Minnesota State Board
of Law Examiners for Amendment
of the Rules for Admission to the Bar**

**PETITION FOR
RULE AMENDMENT**

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner, the Minnesota State Board of Law Examiners (“Board”), respectfully petitions this Court to amend the Rules for Admission to the Bar (“Rules”). A copy of the proposed changes is attached as **Exhibit A** and discussed below.

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota. Minn. Stat. §481.01 (2015).
2. Under the supervision of the Court, the Board is responsible for ensuring that lawyers who are admitted to the Bar in Minnesota have the competence as well as the character and fitness required to maintain the trust and confidence of clients, the public, the legal system, and the legal profession. Rule 1 of the State of Minnesota Rules for Admission to the Bar (2015).

DEFINITION OF APPLICANT PORTAL

3. The Board recommends adding into Rule 2A(2) a definition for “applicant portal” as follows:

(2) “Applicant portal” is a confidential password-protected electronic site used by applicants and Board staff to share information and to send and receive documents.

4. In 2011, the Board implemented a secure online communication portal for bar applicants. This password-protected and encrypted system permits two-way communication between bar applicants and Board staff. The portal has reduced response time in communications between applicants and Board staff, reduced postage costs, and facilitated the investigation process.

REMOVING REFERENCE TO POSTING EXAMINATION SCORES

5. The Board recommends that Rule 6H, the provision requiring public posting of successful examination numbers, be amended as follows:

Examination Results. The results of the examination shall be released electronically to each examinee via the examinee’s applicant portal ~~by regular mail to the address listed in the files of the Board, and successful examination numbers will be posted at the Court, on the Board’s website, and at each Minnesota law school.~~ The date of the release of examination results shall be announced at the examination.

6. Rule 6H currently states that examination results should be sent “to examinees by regular mail” and that “successful examination numbers will be posted at the Court, on the Board’s website, and at each Minnesota law school.”
7. The Board now posts examination results electronically through the confidential applicant portal on the day results are released. Examinees no longer need to consult the results posted at the law schools or at the Court.

FORMER BOARD MEMBERS

8. The Board recommends amending Rule 3B(6) as follows:

B. Authority. The Board is authorized:

(6) To delegate to its President the authority to appoint former Board members to assist the Board by joining one or more current Board members in conducting character and fitness interviews of applicants.

9. In recent years, the Board has conducted an increased number of applicant interviews. In 2006, only two interviews were conducted. Between 2011 and 2014, the Board averaged more than 12 applicant interviews per year. The interviews are important and helpful to the Board in its decision-making.

10. Former members of the Board, particularly those who have recently retired from the Board, have extensive experience interviewing applicants and remain familiar with the Rules, policies, and practices of the Board. Former Board members know the options the Board has with respect to the disposition of applicant files and understand that the Board's mission is to ensure that those who are admitted to the bar have the necessary competence and character and fitness required of members of the profession. To the extent that former Board members are involved in applicant interviews, the proposed language contemplates that at least one current Board member will also be participating.

WORK PRODUCT

11. The Board recommends amending Rule 14B as follows:

Rule 14B. Work Product. The Board's work product shall not be produced or otherwise discoverable, nor shall any member or former member of the Board or its staff be subject to deposition or compelled testimony related to their Board duties except upon a showing of extraordinary circumstance and compelling need and upon order of the Court. In any event, the mental impressions, conclusions, and opinions of any member or former member of the Board or its staff shall be protected and not subject to compelled disclosure.

12. This recommendation is intended to make it clear that Rule 14 B's work product protection applies to former Board members as to their Board duties, including their participation in applicant interviews pursuant to newly proposed Rule 3B(6).

STUDENT PRACTICE RULES

13. The Board recommends amending Rule 3B(10) to add the following provision:

B. Authority. The Board is authorized:

(10) To administer the Student Practice Rules of the Minnesota Supreme Court.

14. In 2013, the Student Practice Rules were amended to give the Board authority to administer those rules as well as the Rules for Admission to the Bar. The proposed amendment to Rule 3B(11) adds the administration of the Student Practice Rules to the list of the Board's responsibilities.

NO NEED FOR CHARACTER AND FITNESS DETERMINATION

15. The Board proposes amending Rule 5B(7) to state as follows:

B. Character and Fitness Standards and Investigation.

* * *

(7) Determination. With the exception of applicants who have withdrawn, or have been deemed to have withdrawn, a character and fitness determination shall be made with respect to each applicant who is either a successful examinee or otherwise qualified by practice for admission under these Rules. An adverse determination on character and fitness grounds may be appealed under Rule 15.

16. Rule 5B(7) currently requires a character and fitness determination for “each applicant who is a successful examinee or who is qualified by practice for admission.” Occasionally, an applicant’s file is closed because the applicant withdraws or is deemed to have withdrawn for failure to respond to the Board office’s requests for information. The proposed Rule 5B(7) language makes clear that the Board is not obligated to make a character and fitness determination in cases where the applicant has withdrawn the application or has stopped responding to requests for information from the Board office.

The Board respectfully requests that the Court amend the current Rules for Admission to the Bar and adopt the proposed amended Rules attached to this Petition as Exhibit A.

Dated: January 4, 2016

/s/

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EXHIBIT A

STATE OF MINNESOTA

RULES FOR ADMISSION TO THE BAR

**As amended
[DATE]**

RULE 2. DEFINITIONS AND DUE DATE PROVISIONS

A. Definitions. As used in these Rules:

- (1) "Application file" means all information relative to an individual applicant to the bar collected by or submitted to the Board while the application is pending and during any conditional admission period.
- (2) "Applicant portal" is a confidential password-protected electronic site used by applicants and Board staff to share information and to send and receive documents.
- (3) ~~(2)~~ "Approved law school" means a law school provisionally or fully approved by the American Bar Association.
- (4) ~~(3)~~ "Board" means the Minnesota State Board of Law Examiners.

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RULE 3. STATE BOARD OF LAW EXAMINERS

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B. Authority. The Board is authorized:

- (1) Subject to the approval of the Court, to employ a director on a full-time or part-time basis, to prescribe duties, and to fix compensation;
- (2) To secure examination questions and other testing instruments that the Board finds valid and reliable in measuring the competence of applicants to practice law, and to pay reasonable compensation for them;
- (3) To employ examination graders;
- (4) To establish a minimum passing score for the examinations;
- (5) To conduct investigations of applicants' backgrounds as may be reasonably related to fitness to practice or eligibility under the Rules, and to require applicants to pay the costs of the investigations;
- (6) To delegate to its President the authority to appoint former Board members to assist the Board by joining one or more current Board members in conducting character and fitness interviews of applicants;
- (7) ~~(6)~~ To recommend to the Court the admission and licensure of applicants to practice law in Minnesota;
- (8) ~~(7)~~ To administer these Rules and adopt policies and procedures consistent with these Rules;
- (9) ~~(8)~~ To delegate to its president and director authority to make necessary determinations to implement the Board's policies and procedures and these Rules;
- (10) To administer the Student Practice Rules of the Minnesota Supreme Court.
- (11) ~~(9)~~ To prepare and disseminate information to prospective applicants and the public about procedures and standards for admission to practice law in this state.

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RULE 5. STANDARDS FOR ADMISSION

* * *

B. Character and Fitness Standards and Investigation.

* * *

(7) **Determination.** With the exception of applicants who have withdrawn, or have been deemed withdrawn, a character and fitness determination shall be made with respect to each applicant who is either a successful examinee or otherwise qualified by practice for admission under these Rules. An adverse determination on character and fitness grounds may be appealed under Rule 15.

* * *

RULE 6. ADMISSION BY EXAMINATION

* * *

H. Examination Results. The results of the examination shall be released electronically to each examinee via the examinee's applicant portal ~~by regular mail to the address listed in the files of the Board, and successful examination numbers will be posted at the Court, on the Board's website, and at each Minnesota law school.~~ The date of the release of examination results shall be announced at the examination.

* * *

RULE 14. CONFIDENTIALITY AND RELEASE OF INFORMATION

- A. Application File.** An applicant may review the contents of his or her application file with the exception of the work product of the Board and its staff. Such review must take place within two years after the filing of the last application for admission in Minnesota, at such times and under such conditions as the Board may provide.
- B. Work Product.** The Board's work product shall not be produced or otherwise discoverable, nor shall any member or former member of the Board or its staff be subject to deposition or compelled testimony except upon a showing of extraordinary circumstance and compelling need and upon order of the Court. In any event, the mental impressions, conclusions, and opinions of any member or former member of the Board or its staff shall be protected and not subject to compelled disclosure.

C. Examination Data.

- (1) **Statistics.** Statistical information relating to examinations and admissions may be released at the discretion of the Board.
- (2) **MBE Score Advisory.** The director may release individual MBE scores as provided in Rule 7E.
- (3) **Transfer of MBE Score.** The score of an examinee may be disclosed to the bar admission authority of another jurisdiction, upon the examinee's written request to the National Conference of Bar Examiners (NCBE).
- (4) **Transfer of UBE Score.** The score of an examinee may be disclosed to the examinee or to the bar admission authority of another jurisdiction, upon the examinee's written request to the National Conference of Bar Examiners (NCBE).
- (5) **Release of Examination Scores and Essays to Unsuccessful Examinees.** The director may release to an unsuccessful examinee the scores assigned to each of the various portions of the examination; and, upon payment of the fee specified by Rule 12K, the director may release copies of an unsuccessful examinee's answers to the MEE and MPT questions.
- (6) **Release of Examination Scores to Law Schools.** At the discretion of the Board, the examination scores of an examinee may be released to the law school from which the examinee graduated.

D. Release of Information to Other Agencies. Information may be released to the following:

- (1) Any authorized lawyer disciplinary agency;
- (2) Any bar admissions authority; or
- (3) Persons or other entities in furtherance of the character and fitness investigation.

E. Referrals. Information relating to the misconduct of an applicant may be referred to the appropriate authority.

F. Confidentiality. Subject to the exceptions in this Rule, all other information contained in the files of the office of the Board is confidential and shall not be released to anyone other than the Court except upon order of the Court.

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